

Jul 18, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VINSENT A. DAVID,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

NO: 2:19-CV-138-RMP

ORDER SUMMARILY DISMISSING
HABEAS PETITION AND
DENYING MOTION AS MOOT

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid. Petitioner has also filed a Motion to Substitute Respondent and a Motion for an Order to Show Cause, ECF Nos. 3 and 4.

PROPER RESPONDENT

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S.

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1 426, 435 (2004); *Stanley v. Cal. Sup. Ct.*, 21 F.3d 359, 360 (9th Cir. 1994). If the
2 petitioner is incarcerated, the proper respondent is generally the warden of the
3 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81
4 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal
5 courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360.

6 Petitioner acknowledges his error and submitted the Motion to Substitute
7 Respondent, ECF No. 3. Based on the disposition of this action, however, the
8 Motion will be denied as moot.

9 EXHAUSTION REQUIREMENT

10 Petitioner challenges his 2018 Spokane County guilty plea to the charge of
11 failure to register as a sex offender. He was sentenced to 43 months incarceration.
12 Petitioner indicates that he did not appeal. ECF No. 1 at 2.

13 In his grounds for relief, Petitioner argues that the State of Washington has
14 no jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-12. It has
15 long been settled that state courts are competent to decide questions arising under
16 the United States Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It
17 is the duty of the state court, as much as it is that of the federal courts, when the
18 question of the validity of a state statute is necessarily involved, as being in alleged
19 violation of any provision of the federal constitution, to decide that question, and to
20 hold the law void if it violate that instrument.”); *see also Worldwide Church of*
21 *God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as

1 competent as federal courts to decide federal constitutional matters). Therefore,
2 Petitioner's arguments to the contrary lack merit.

3 Additionally, before a federal court may grant habeas relief to a state
4 prisoner, the prisoner must exhaust the state court remedies available to him. 28
5 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally
6 requires that a prisoner give the state courts an opportunity to act on his claims
7 before he presents those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S.
8 838 (1999). A petitioner has not exhausted a claim for relief so long as the
9 petitioner has a right under state law to raise the claim by available procedure. *See*
10 *Id.*; 28 U.S.C. § 2254(c).

11 To meet the exhaustion requirement, the petitioner must have "fairly
12 present[ed] his claim in each appropriate state court (including a state supreme
13 court with powers of discretionary review), thereby alerting that court to the
14 federal nature of the claim." *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*,
15 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court
16 by describing the factual or legal bases for that claim and by alerting the state court
17 "to the fact that the ... [petitioner is] asserting claims under the United States
18 Constitution." *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249
19 F.3d 895, 898 (9th Cir. 2001). Mere similarity between a claim raised in state
20 court and a claim in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at
21 365–66.

1 Furthermore, to fairly present a claim, the petitioner “must give the state
2 courts one full opportunity to resolve any constitutional issues by invoking one
3 complete round of the State’s established appellate review process.” *O’Sullivan*,
4 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
5 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
6 (1971). It does not appear from the face of the Petition or the attached documents
7 that Petitioner has exhausted his state court remedies as to each of his grounds for
8 relief. Additionally, Petitioner affirmatively represents that he did not exhaust his
9 state court remedies.

10 **GROUND FOR FEDERAL HABEAS RELIEF**

11 Petitioner asserts that the Washington state constitution contradicts the
12 federal constitution regarding the Fifth Amendment right to “presentment or
13 indictment of a Grand Jury.” He claims “no bill of indictment” was brought
14 against him rendering his arrest, conviction and imprisonment illegal.

15 Petitioner seems to argue that because the state courts have defied “federally
16 established procedures and processes for the adjudication of crimes” only “a court
17 of federal jurisdiction” has jurisdictional authority over his claims. His bald
18 assertion that “due process of the law was ignored” is unsupported by his factual
19 allegations.

20 The United States Supreme Court stated long ago: “Prosecution by
21 information instead of by indictment is provided for by the laws of Washington.

1 This is not a violation of the Federal Constitution.” *See Gaines v. State of*
2 *Washington*, 277 U.S. 81, 86 (1928). The Fifth Amendment’s indictment by grand
3 jury requirement has not been incorporated to apply to the states through the
4 Fourteenth Amendment like other Bill of Rights clauses have. *See Hurtado v.*
5 *People of State of Cal.*, 110 U.S. 516, 538 (1884). Consequently, Petitioner’s
6 assertions to the contrary presented in his four grounds for federal habeas relief are
7 legally frivolous.

8 Because it plainly appears from the petition and the attached exhibits that
9 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF
10 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in
11 the United States District Courts. All pending motions are **DENIED as moot**.

12 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
13 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
14 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
15 taken in good faith, and there is no basis upon which to issue a certificate of
16 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
17 appealability is therefore **DENIED**.

18 **DATED** July 18, 2019.

19
20 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge